

P.S.
Bullhead
2001

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE DENIAL OF
A SUBSTANTIAL DEVELOPMENT PERMIT
BY THE TOWN OF GIG HARBOR TO
THOMAS G. MORRIS, JR. AND
DAVID R. MORRIS

THOMAS G. MORRIS, JR. and
DAVID R. MORRIS,

Appellants,

vs.

TOWN OF GIG HARBOR,

Respondent.

SHB No. 81

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter having come on duly and regularly for hearing before the Shorelines Hearings Board, presided over by Walt Woodward, and consisting of Mary Ellen McCaffree, Arden A. Olson and Robert E. Beaty, which hearing was held at the Town Hall, Gig Harbor, Washington, on November 9, 1973, and the Board at that time having heard testimony from the Town of Gig Harbor, through the Mayor John Bujacich and through Councilwoman Ruth Bogue, and further having heard the testimony

1 from the appellants above, having reviewed all of the material submitted
2 to the Board including typed transcripts of all testimony of objecting
3 persons and their attorneys given at previous Town Council hearings; and
4 the Board having made a personal inspection of the site for the proposed
5 private boatdock as well as viewing the adjacent properties to either side,
6 and without being required to, but having considered exceptions of a non-
7 party, and having denied same, and having fully satisfied itself in all
8 respects, hereby enters the following

9 FINDINGS OF FACT

10 I.

11 On May 14, 1973, the appellants, Thomas G. Morris, Jr. and David R.
12 Morris, were issued a final denial of their application for a substantial
13 development permit under the Shoreline Management Act, by the respondent,
14 the Town of Gig Harbor. Appellants filed a timely request for review with
15 the Shorelines Hearings Board, which the Office of the Attorney General
16 duly and timely certified.

17 II.

18 The appellants who are owners of waterfront property on Harborview
19 Avenue South, Gig Harbor, Washington, submitted an application to the
20 Incorporated Town of Gig Harbor, Washington for a substantial development
21 permit to repair and preserve an existing concrete bulkhead, to construct
22 110 feet of dock on piling, an inclined gangway, 8 feet by 70 feet,
23 and a 5 feet by 35 feet boat float on tidelands of the second class frontin
24 Gig Harbor, all in Section 8, Township 21 north, Range 2 east of the
25 Willamette meridian. This property is 60 feet in width and extends 228
26 feet seaward from the existing concrete bulkhead. The appellants own

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 the tidelands mentioned above. This harbor is a shoreline of state-wide
2 significance under the Shoreline Management Act. (RCW 90.58.030)

3 III.

4 On November 13, 1972, the appellants after having had their
5 original application denied by the Town Council of Gig Harbor, resubmitted
6 their basic application with some revisions regarding the footage width
7 of the styrofoam float at the end of the dock. This was reduced from
8 35 feet to 26 feet which is 4 feet less than one-half of their
9 waterfront, and requested that their proposal be reconsidered at the
10 Town Council meeting of November 27, 1972.

11 IV.

12 On January 22, 1973, prior to the regular meeting of the Town
13 Council of Gig Harbor, a third public hearing was held on the revised
14 application of the appellants for a substantial development permit under
15 the Shoreline Management Act. The appellants were represented at this
16 hearing by their attorney Albert R. Malanca, who proposed a possible
17 further revision of the design plans. He suggested that the appellants
18 would be willing to put the float at an angle in order to leave more
19 space between their dock and those of their neighbors.

20 V.

21 The appellants had originally submitted a detailed drawing of
22 their proposed private boatdock, and this drawing was modified by
23 certain design changes as contained and outlined in a letter signed by
24 the appellants and submitted at the January 22, 1973 meeting. Because
25 of questions raised at previous hearings, the appellants modified
their design for their boatdock and float to accommodate the objection

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 raised by the property owners on either side of their property.

2 VI.

3 The testimony of representatives of the Town of Gig Harbor, and
4 the transcript of the Town Council meeting of January 22, 1973, shows
5 that the main objections presented to the Town Council came from
6 Puget Sound Herring Sales, Inc. represented at the said hearing by
7 Mr. Ray Graves, their attorney, and from the Stutz Shell Oil Company
8 Dock, represented at said hearing by the owner and attorney, Owen P.
9 Hughes.

10 VII.

11 The respondent was represented by Mayor John Bujacich and
12 Councilwoman Ruth Bogue. Both persons have been long time residents
of Gig Harbor. Mr. Bujacich is owner and operator of a fishing
14 boat in Gig Harbor.

15 VIII.

16 It was established by the respondent that the property which is
17 the subject of this appeal is in a commercially-zoned area of Gig Harbor.

18 IX.

19 The testimony shows that there would be no interference of the
20 public's use of the waters in Gig Harbor from the construction of
21 this boatdock and float as proposed and later modified by the
22 appellants.

23 X.

24 The testimony did, however, point to a certain amount of confusion
25 on the part of the respondent as to the proposed use of the facility
by appellants. There was a concern for the problem of persons using

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 the boatdock possibly parking their automobiles on the sides of the
2 street near the subject property.

3 XI.

4 Appellants' property is located on a curve of Harborview Avenue
5 South. Harborview South is the main street leading into the center
6 of the town. Parking automobiles on the sides of this street would
7 create a very grave hazard to persons driving into and out of the
8 Town of Gig Harbor on Harborview Avenue South.

9 XII.

10 Any Conclusion of Law hereinafter recited which should be deemed a
11 Finding of Fact is hereby adopted as such.

12 Therefore, from the foregoing Findings of Fact, the Board makes the
following

14 CONCLUSIONS OF LAW

15 I.

16 The Board has proper jurisdiction of the parties hereto in the
17 above-entitled administrative hearing, and the subject matter of this
18 action; all proper notices pertaining to a public hearing were held
19 and complied with, and the requirement of all town ordinances were
20 met.

21 II.

22 The respondent has not yet completed a master program for the
23 development of its shorelines as set out in RCW 90.58.080. However,
24 the appellants' application for a permit to construct a boatdock and
25 float is a substantial development which is consistent with the policy
section of the Shoreline Management Act (RCW 90.58.020) and the

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 Guidelines of the Department of Ecology.

2 III.

3 Any private boat dock facility granted in this request for review
4 must have adequate off-street automobile parking to assure that the
5 sides of the public street of Gig Harbor are kept clear of parked
6 automobiles as referred to in Finding of Fact XI.

7 IV.

8 Any Finding of Fact which should be deemed a Conclusion of Law is
9 hereby adopted as such.

10 From these Conclusions, the Shorelines Hearings Board issues this

11 ORDER

12 The appellants are hereby granted a substantial development permit
13 under the Shoreline Management Act of 1971 to construct a boatdock as
14 designed and modified and submitted to the Gig Harbor Town Council
15 subject to the following condition:

16 The appellants shall provide one off-street automobile parking
17 space for each boat to be moored along this private boatdock.

18 DONE at Lacey, Washington this 12th day of April, 1974.

19 SHORELINES HEARINGS BOARD

20 Walt Woodward
21 WALT WOODWARD, Chairman

22 Mary Ellen McCaffree
23 MARY ELLEN McCAFFREE, Member

24 Arden A. Olson
25 ARDEN A. OLSON, Member

26 Robert E. Beaty
27 ROBERT E. BEATY, Member

28 FINAL FINDINGS OF FACT,
29 CONCLUSIONS AND ORDER - 6

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT GRANTED BY)
THE CITY OF REDMOND TO)
STATE INVESTORS, INC.)
STATE INVESTORS, INC.,)
Appellant,)
vs.)
CITY OF REDMOND,)
Respondent.)

SHB No. 83

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

THIS MATTER being a request for review of a conditioned
substantial development permit for filling of part of a two and one-
half acre site in the Redmond business district having come on
regularly for hearing before the Shorelines Hearings Board on the
23rd day of November, 1973, at Redmond, Washington; and appellant,
State Investors, Inc., appearing through its attorney, Richard U.
Chapin and respondent, City of Redmond, appearing through its attorney,

James Dailey; and Board members present at the hearing being Messrs. Walt Woodward, W. A. Gissberg, Robert F. Hintz, Ralph A. Beswick and Mrs. Mary Ellen McCaffree; and the Board having considered the sworn testimony, exhibits, records and files herein and having entered on the 18th day of December, 1973, its proposed Findings of Fact, Conclusions and Order; and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and

The Board having received no Exceptions to said proposed Findings, Conclusions and Order; and the Board being fully advised in the premises; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 18th day of December, 1973, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

DONE at Lacey, Washington this 29th day of January, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

W. A. Gissberg
W. A. GISSBERG, Member

Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

CERTIFICATION OF MAILING

I, Dolories Osland, certify that I mailed copies of the foregoing document on January 29th, 1974 to each of the following parties:

Mr. Richard U. Chapin
Inslee, Best, Chapin & Doezie P.S.
Cascade Building
855 - 106th N.E.
Bellevue, Washington 98004

Mr. James Dailey
Lawson and Dailey
8460 - 164th Avenue N.E.
Redmond, Washington 98052

State Investors, Inc.
7841 Leary Way
Redmond, Washington 98052

Mr. Julian Sayers, Director
Redmond Planning Department
City of Redmond
Redmond, Washington 98052

the foregoing being the last known post office addresses of the above-named parties. I further certify that proper postage had been affixed to the envelopes deposited in the U. S. mail.

Dolories Osland
DOLORIES OSLAND, Clerk
SHORELINES HEARINGS BOARD

five
1/2

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT GRANTED BY)
THE CITY OF REDMOND TO)
STATE INVESTORS, INC.)
STATE INVESTORS, INC.,)
Appellant,)
vs.)
CITY OF REDMOND,)
Respondent.)

SHB No. 83

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter having come on for hearing before the Shorelines Hearings Board in the City of Redmond, Washington on November 23, 1973 and Messrs. Woodward, Gissberg, Hintz and Beswick and Mrs. McCaffree, members of the Board, being in attendance thereon and the appellant appearing through its attorney, Richard U. Chapin and the respondent appearing through its attorney, James Dailey, and testimony having been given and exhibits introduced, and the Board having been fully advised in the

EXHIBIT A

premises and having by unanimous decision given its oral opinions approving appellant's application, does make the following:

FINDINGS OF FACT

I.

That the subject property is within the flood plain associated with Bear Creek at a point where said Creek has a mean annual flow in excess of 20 cubic feet per second.

II.

That pending the construction of improvements on top of the proposed fill, a sod of satisfactory material should be grown over the entire surface of the proposed fill and that such sod will, in conjunction with a retention pond which shall be designed and constructed on the proposed fill, satisfactorily control runoff of surface water and prevent any significant increase in peak runoff, erosion and siltation of Bear Creek; that such sod and retention pond should remain in place until the construction of other water storage or retainage facilities which will satisfactorily control runoff of surface water and prevent any significant increase in peak runoff, erosion and siltation of Bear Creek following construction of improvements on the proposed fill. That construction of the proposed fill should take place between May 1, 1974 and September 1, 1974. That the proposed fill will result in the raising of the water level of a 100-year frequency flood four-tenths of an inch between the Redmond-Fall City Highway Bridge and the Union Hill Road Bridge and that the rise would gradually decrease to zero in the area between the Union Hill Road Bridge and the Northeast 95th Street Bridge.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

III.

That the proposed fill will not effect the velocity or volume of water flow in the floodway of Bear Creek.

IV.

That the area of flood plain to be affected by the fill constitutes approximately 217 acres and that the area of the proposed fill constitutes approximately one percent of the area of the affected flood plain.

V.

That the proposed fill will not cause any significant erosion and will not result in any increased siltation of Bear Creek.

VI.

The proposed fill will not have any detrimental effects on the salmon or other fish or the carrying or transportation qualities of Bear Creek or its water.

VII.

That the property on which the proposed fill will be placed is and for approximately ten years has been zoned C-M for commercial purposes by the City of Redmond. That the comprehensive land use plan of the City of Redmond, entitled "Optimum Land Use Plan" designates the subject property as being for commercial purposes.

VIII.

That the proposed fill will not create a need for any changes in the channelization of Bear Creek.

IX.

That the proposed fill will not cause any significant detrimental

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 effect on or hazard to adjacent or other life, property or natural
2 resource systems.

3 That the proposed fill will allow for the maintenance of sufficient
4 flood plain cross section to handle projected flood flows without altering
5 the stability and/or alignment of Bear Creek.

6 That an underground water storage facility and filtering system
7 can be adequately constructed to prevent any significant increase in
8 the instantaneous surge flow to Bear Creek and prevent petroleum products
9 and other pollutants from discharging into Bear Creek.

10 That the perimeter of the fill can and should be provided with
11 vegetation and that the providing of such vegetation will prevent
12 significant erosion.

13 That the fill can be constructed of such materials that will not
14 cause any problem of water quality in Bear Creek.

15 That the proposed fill will not alter total water surface, will not
16 be a restriction to navigation, will not impede the water flow or
17 circulation of Bear Creek nor reduce the water quality of Bear Creek nor
18 result in the destruction of any natural habitat.

19 From which comes these

20 CONCLUSIONS OF LAW

21 I.

22 The property on which the proposed fill is located is within the
23 "Shorelines" as defined in RCW 90.58.

24 II.

25 The proposed fill is consistent with the policy of RCW 90.58.020,
26 the Guidelines adopted by the Department of Ecology including

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 WAC 173-16-060(14), the "Optimum Land Use Plan of the City of Redmond"
2 and so far as can be ascertained, the master program being developed by
3 the Redmond Shorelines Citizen's Advisory Committee as set forth in
4 their preliminary goals and policies for the Redmond-Shorelines
5 Planning Area dated November 14, 1973.

6 III.

7 That the appellant bore and met its burden of proof.

8 Therefore, the Shorelines Hearings Board issues this

9 ORDER

10 1. That the substantial development permit for which appellant made
11 application to the City of Redmond under its File Number SDA 8 be
12 issued, authorizing the fill to the full extent for which said
13 application was made subject to the following conditions:

14 a. The conditions set forth in paragraphs 1, 2, 6, 7, 8, 9,
15 10 and 11 of the "Decisions and Conditions" section of the Redmond
16 Planning Department Staff Report dated May 11, 1973, a copy of the
17 pertinent portions of which are attached hereto and hereby incorporated
18 into this Order.

19 b. That a retention pond be designed and constructed con-
20 temporaneously with the establishment of the fill sufficient to control
21 runoff of surface waters and prevent any significant increase in peak
22 runoff, erosion or siltation of Bear Creek.

23 c. That a satisfactory grass cover be grown over the entire
24 fill.

25 d. That the fill shall be installed between May 1, 1974 and
26 September 1, 1974.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

c. That all applicable ordinances of the City of Redmond pertaining to said fill be complied with.

f. That following the completion of the fill, no additional substantial development shall take place without compliance with RCW 90.58.

g. That following completion of the fill, no additional substantial development shall take place on the subject property without installation of a storage retention facility and filtering system adequate to control runoff of surface waters and prevent any significant increase in peak runoff, erosion or siltation of Bear Creek.

2. That the City of Redmond be and it is directed to issue a substantial development permit to the full extent applied for by appellant under City of Redmond's File No. SDA 8 subject to the conditions hereinabove set forth.

DONE at Lacey, Washington this 18th day of December, 1973.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

W. A. Gissberg
W. A. GISSBERG, Member

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member

X.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Shorelines Hearings Board makes this

ORDER

1. The granting of a permit to respondent, Keating, is affirmed.
2. The permit is remanded to Kittitas County to reissue the permit in such form as shall expressly and definitely state thereon the conditions only under which the County shall allow the filling to take place under its permit. At any event, the permit shall include conditions dealing with those matters discussed in Conclusion of Law VIII.

DONE at Lacey, Washington this 8th day of August, 1974.

SHORELINES HEARINGS BOARD

Ralph A. Deswick
RALPH A. DESWICK, Member

W. A. Gissberg
W. A. GISSBERG, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

I concur in the Order but do not support Conclusion of Law IV.

Walt Woodward
WALT WOODWARD, Chairman

I dissent.

Edward Heavey
EDWARD HEAVEY, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

*Pinner
lit*

5

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT DENIED BY)
SNOHOMISH COUNTY TO)
D. D. GRAHAM,)
D. D. GRAHAM,)
Appellant,)
v.)
SNOHOMISH COUNTY,)
Respondent.)

SHB No. 85

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the request for review of appellant, D. D. Graham, of the denial of a shoreline management substantial development permit by respondent, Snohomish County, having come on regularly for hearing on the 29th day of September, 1975 in Everett, Washington, and appellant D. D. Graham appearing through his attorney, Edward D. Hansen, and respondent Snohomish County appearing through its attorney, Richard S. Lowry, Deputy Prosecuting Attorney, with Ellen D. Peterson, hearing examiner presiding, and the Board having either heard the testimony or

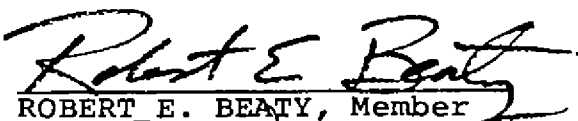
1 considered the record, and having reviewed the exhibits and post-hearing
2 briefs herein, and having entered on the 23d day of February, 1976, its
3 proposed Findings of Fact, Conclusions of Law and Order, and the Board
4 having served said proposed Findings, Conclusions and Order upon all
5 parties herein by certified mail, return receipt requested and twenty
6 days having elapsed from said service; and

7 The Board having received no exceptions to said proposed Findings,
8 Conclusions and Order and the Board being fully advised in the premises;
9 now therefore,


10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order dated the 23d day of
12 February, 1976, and incorporated by this reference herein and attached
13 hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 19th day of March, 1976.

16 SHORELINES HEARINGS BOARD

17 
18 ROBERT E. BEATY, Member

19 
20 RALPH A. BESWICK, Member

21 
22 W. A. GISSBERG, Member

23 
24 ROBERT F. HINTZ, Member

25 
26 WALT WOODWARD, Member

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

Mr. Richard S. Lowry
Deputy Prosecuting Attorney
Office of Snohomish County
Prosecuting Attorney
Snohomish County Courthouse
Everett, Washington 98201

Mr. Edward D. Hansen
Williams, Novack & Hansen, P. S.
501 First National Bank Building
Everett, Washington 98201

Mr. D. D. Graham
336 N.W. 175th
Seattle, Washington 98177

Snohomish County Commissioners
Snohomish County Courthouse
Everett, Washington 98201

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT DENIED BY)
SNOHOMISH COUNTY TO)
D. D. GRAHAM,)
D. D. GRAHAM,)
Appellant,)
v.)
SNOHOMISH COUNTY,)
Respondent.)

SHB No. 85

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A hearing on the request for review of appellant, D. D. Graham, of the denial of a shoreline management substantial development permit by respondent, Snohomish County, was held in Everett, Washington, on September 29, 1975, before Board members, Ralph A. Beswick, Robert F. Hintz and Robert E. Beaty; Ellen D. Peterson, hearing officer, presided. Edward D. Hansen appeared as attorney for appellant, D. D. Graham; Richard S. Lowry, Deputy Prosecuting Attorney, represented the respondent, Snohomish County.

EXHIBIT A

1 Having either heard the testimony or considered the record, and
2 having reviewed the exhibits and post-hearing briefs, the Board makes
3 and enters these

4 FINDINGS OF FACT

5 I

6 The proposed project site is a shoreline of state-wide significance.

7 II

8 The proposed development would fill 11.5 acres of a twenty-acre
9 site owned or under purchase contract by appellant. The site consists
10 of two adjoining parcels of land located on the east bank of the main
11 channel of the Snohomish River in Sections 21 and 28, Township 29 N,
12 Range 5 E.W.M. The property includes the major portion of the 1930 Plat
13 of River Front Tracts (hereinafter Area I) in addition to unplatted lar
14 south of the state highway (Area II).

15 The site is located immediately upstream of the point of divergence
16 of Steamboat and Union Sloughs and is directly east, across the
17 Snohomish River, from the City of Everett. It is bisected east-west by
18 two elevated trestles of state Route 2, a controlled access highway in
19 this area. A Snohomish County dike, approximately 13 feet above mean
20 sea level, partially surrounds the southern boundary of Area II.

21 III

22 Area I is zoned for rural use with a flood plain overlay
23 (designation of flood hazard) and Area II is zoned agricultural with a
24 flood plain overlay. The Snohomish County Comprehensive Plan, adopted
25 in 1956, designates future use of the project site as agricultural. No
26 draft master program was in existence at the time the permit was denied.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 The project site has a history of industrial use but in recent
2 years and prior to appellant's acquisition the site reverted to its
3 present undeveloped state as marshland subject to periodic flooding.
4 All of the property lies within the flood plain.

5 The topography varies from five to eleven feet above mean sea level.
6 Vegetation and wildlife of Area I is that typical of marshland; Area II
7 is almost entirely forested by large alder.

8 IV

9 An application for a substantial development permit was filed by
10 appellant with the Snohomish County Planning Department on November 9,
11 1972. The project was described as a landfill of demolition, excavation,
12 and river-dredge spoils materials. Proposed ultimate uses of the site
13 included dryland log storage and dredge spoil transfer facilities. The
14 fill of approximately 200,000 cubic yards would raise the site's
15 elevation from 5-11 feet to 17 feet.

16 In March, 1973, a draft environmental impact statement (EIS), based
17 in part on information supplied by appellant's engineer, was prepared
18 and circulated by the Planning Department to city, county, and state
19 agencies. A final EIS incorporating agency responses was completed
20 prior to the Snohomish County Planning Commission's public hearing on
21 the application, held May 22, 1973. Appellant's wife, engineer, and
22 attorney testified at the public hearing on the project.

23 The Planning Commission found that the proposed development was
24 inconsistent with the policies of the Shoreline Management Act (SMA)
25 and guidelines promulgated pursuant thereto. It further found that the
26 project would establish a precedent for industrial land use of the

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Snohomish River Flood Plain and was contra to the purpose of the National
2 Flood Insurance Program of encouraging the retention of flood-prone areas
3 for open space. On the bases of these and other stated findings, on
4 May 22, 1973, the Planning Commission unanimously recommended denial of
5 the application to the Board of County Commissioners.

6 In a letter to the Board dated May 30, 1973, appellant challenged
7 the Planning Commission's decision, requested a hearing before the
8 Board, and asked to be notified of any public hearings held on the
9 matter. Chapter 21.12 of the Snohomish County Code regulates the issuance
10 of shoreline development permits. Section 21.21.090, "Duties of the
11 Board," requires that if the Board alters any recommendation of the
12 Planning Commission, it must conduct its own public hearing on the
13 application. On June 11, 1973, at a public meeting, the Commissioners
14 unanimously resolved to concur in all findings and recommendations of the
15 Planning Commission and denied the application. Appellant timely
16 filed his request for review of this decision on June 20, 1973.

17 V

18 The hearing on the merits of this matter was repeatedly continued
19 at the request of both parties, pending completion of a study by the
20 Army Corps of Engineers intended to designate the floodway for the
21 lower Snohomish River. The study as received by Snohomish County on
22 September 12, 1975, detailed four alternative floodway designations.
23 Under three of the four alternatives, the project site was included within
24 the floodway which would preclude any obstructive development on the
25 property. Under alternative four, appellant's property would be located
26 within the floodway fringe thus removing it from the proscription of

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 development thereon under the National Flood Insurance Program. The
2 Corps study made no attempt to recommend to the County any one of the
3 four alternatives, considering such designation a land use decision
4 within the County's prerogatives. It was further elicited at hearing
5 that the four alternatives were merely representative of an indefinite
6 number of such floodway designation alternatives created by the River's
7 multiple channel configuration.

8 VI

9 At a pre-hearing conference held in this matter on March 20, 1974,
10 the parties stipulated that if the permit were to be granted, the project
11 fill would consist solely of river-dredge spoils from the Corps of
12 Engineers' dredging of the Snohomish River. Testimony at hearing
13 indicated that (a) a need for additional river-dredge spoils sites for
14 the lower Snohomish River does exist; (b) the Planning Department staff
15 would continue to object to appellant's site for such spoils, and (c)
16 at no time subsequent to the stipulation did the project as so modified
17 come before the Snohomish County Planning Commission or the Board of
18 County Commissioners for official review and action.

19 VII

20 Any Conclusion of Law hereinafter recited which should be deemed
21 a Finding of Fact is hereby adopted as such.

22 From these Findings, the Shorelines Hearings Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 The proposed project before this Board in terms of ruling on
26 appellant's challenges to respondent's action is as the project was

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

described at the time the Board of County Commissioners rendered its decision on the application, i.e., June 11, 1973.

II

Appellant contends that "the procedures followed by Snohomish County in denying the appellant's permit application without a hearing constitute a denial of procedural due process." Neither the SMA nor the relevant guideline promulgated pursuant thereto (WAC 173-14-080) mandates local government to provide a public hearing prior to the issuance or denial of a permit. The guarantee of a public hearing under the Snohomish County Code in those instances where the Board of County Commissioners fails to agree with all the Planning Commission findings and recommendations is not applicable in this case. Appellant was in fact afforded an opportunity to present his views at the Planning Commission's public hearing and through this request for review, his case has again been publicly stated. Under these circumstances, the failure of the Snohomish Board of County Commissioners to hold its own public hearing on appellant's application does not constitute a denial of procedural due process.

III

Appellant urges that the action of the Board of County Commissioners in denying the permit was an "arbitrary and capricious" decision based solely on the slanted findings and recommendations of the planning staff and commission. Appellant failed to meet its burden of proof as to the alleged characterization of the Planning Commission findings and recommendations. Further, the Board concludes that the action of the Board of County Commissioners was taken upon due consideration of the

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 facts upon which reasonable men could differ and was not arbitrary and
2 capricious.

3 IV

4 Appellant invokes the appearance of fairness doctrine and argues that
5 a violation of this doctrine occurred when the Board of County
6 Commissioners failed to afford appellant a second hearing, thereby
7 relying on the "strong" voices, the Planning Commission, to the exclusion
8 of the "weak," the appellant Graham. The appearance of fairness
9 doctrine as developed by the Washington courts is concerned with
10 potential conflict of interest or impropriety on the part of reviewing
11 officials. Its application to facts such as are alleged by appellant
12 in this matter is an ill-founded extension of the doctrine.

3 V

14 Dredge river spoils were included as a proposed use in appellant's
15 initial application. Therefore, respondent Snohomish County did have an
16 opportunity to consider the effects of such a modified landfill and to
17 issue a permit restricted accordingly.

18 The record now before this Board supports the respondent's failure
19 to grant a permit for a landfill composed solely of river dredge spoils.
20 In particular, although appellant did establish that a floodway could
21 be designated in this area which did not include the subject site, no
22 such designation has in fact been made. Until such designation is
23 made, the filling of clearly potential floodway property is violative
24 of the purposes of the Shoreline Management Act and cannot be
25 condoned.

-6
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

VI

Appellant submits that even if a permit is not granted, the project site falls within the ancient plat exemption of the Shoreline Management Act and no permit is required for the project.¹ Appellant did establish that the northerly parcel of the subject property, known as River Front Tracts (Area I) was platted prior to April 1, 1971, and that sales of such lots to appellant did occur prior to April 1, 1971.

Neither party specifically directed the Board's attention to condition (c) of the exemption. With regard to the initial proposal, the record itself is persuasive that all other requirements of the local agency would not be met. The record, however, does not conclusively rebut appellant's claim for an exemption with regard to the modified project.

Contrary to respondent's assumption with respect to subsection (e) of the exemption, appellant need not establish that his project would have been completed by June 1, 1973. Rather, for sites which otherwise

1. "No permit shall be required for any development on shorelines of the state included within a preliminary or final plat approved by the applicable state agency or local government prior to April 1, 1971, if:

(a) The final plat was approved after April 13, 1961, or the preliminary plat was approved after April 30, 1969, or

(b) Sales of lots to purchasers with reference to the plat, or substantial development incident to platting or required by the plat, occurred prior to April 1, 1971, and

(c) The development to be made without a permit meets all requirements of the applicable state agency or local government, other than requirements imposed pursuant to this chapter, and

(e) The development is completed within two years after the effective date of this chapter." RCW 90.58.140(9).

1 qualify, the ancient plat exemption obviated the need to have a shore-
2 line permit for developments thereon until June 1, 1973. No develop-
3 ment could continue without a permit beyond that date.

4 In the instant matter, by tolling the statute on the date the
5 application was filed, November 9, 1972, the appellant would have a
6 maximum of seven months within which to fill on the site as stipulated.

7 The Board concludes that an exemption from the requisites of a
8 shoreline permit apparently does lie for a fill of dredge river spoils
9 on Area I for seven months. However, appellant is reminded that even
10 where the ancient plat exemption applies, the project must be found to
11 be consistent with the policies of the Shoreline Management Act.² It
12 should further be noted that the Act grants to local governments the
13 authority to enforce the provisions of the Act.³

14 VII

15 Any Finding of Fact which should be deemed a Conclusion of Law
16 is hereby adopted as such.

17 Therefore, the Shorelines Hearings Board issues this
18
19

20 2. "Exemption from the effect of the SMA of 1971 under
21 RCW 90.58.140(9)(b)(c) applies only to permit require-
22 ments of the Act by its terms; as limited, it does not
extend to the policy provision in RCW 90.58.140(1)." Putnam v. Carroll, 13 Wn. App. 201, 204 (1975)

23 "Compliance with the policy of the Act is required of
24 all projects, including those which do not require a
permit." WAC 173-14-040.

25 3. RCW 90.58.210.


ORDER

The denial by the respondent Snohomish County Board of Commissioners of the substantial development permit sought by appellant, D. D. Graham, is affirmed.

DATED this 23rd day of February, 1976.

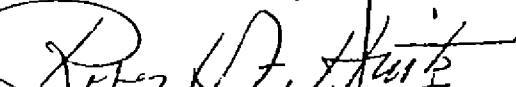
SHORELINES HEARINGS BOARD


Did not participate
CHRIS SMITH, Chairman


ROBERT E. BEATY, Member


RALPH A. BESWICK, Member


W. A. GISSBERG, Member


ROBERT F. HINTZ, Member


WALT WOODWARD, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
MASON COUNTY TO LESTER E. KRUEGER

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

vs.

MASON COUNTY and LESTER E. KRUEGER,

Respondents.

SHB No. 90

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being a request for review of a substantial development permit issued by Mason County to Lester E. Krueger; having come on regularly for hearing before the Shorelines Hearings Board on the 2nd day of November, 1973, at Port Orchard, Washington; and appellants Department of Ecology and Attorney General appearing through their attorneys, Robert V. Jensen and Thomas Evans, Assistant Attorneys General and respondent Mason County not appearing and respondent Lester Krueger

1 appearing through his attorney, Leonard W. Kruse; and Board members
2 present at the hearing being Walt Woodward (presiding), Mary Ellen
3 McCaffree and Robert F. Hintz; and the Board having considered the sworn
4 testimony, exhibits, transcript, records and files herein and having
5 entered on the 23rd day of January, 1974, its proposed Findings of Fact,
6 Conclusions of Law and Order, and the Board having served said proposed
7 Findings, Conclusions and Order upon all parties herein by certified mail,
8 return receipt requested and twenty days having elapsed from said service;
9 and

10 The Board having received no exceptions to said proposed Findings,
11 Conclusions and Order; and the Board being fully advised in the premises;
12 now therefore,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
14 Findings of Fact, Conclusions of Law and Order, dated the 23rd day of
15 January, 1974, and incorporated by this reference herein and attached
16 hereto as Exhibit A, are adopted and hereby entered as the Board's
17 Final Findings of Fact, Conclusions of Law and Order herein.

18 DONE at Lacey, Washington this 27th day of February, 1974.

19 SHORELINES HEARINGS BOARD

20 Walt Woodward
21 WALT WOODWARD, Chairman

22 W. A. Gissberg
23 W. A. GISSBERG, Member

24 Mary Ellen McCaffree
25 MARY ELLEN McCAFFREE, Member

26 Robert F. Hintz
27 ROBERT F. HINTZ, Member

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 CERTIFICATION OF MAILING

2 I, LaRene C. Barlin, certify that I mailed copies of the foregoing
3 document on the 7th day of March, 1974, to each of the following
4 parties:

5 Messrs. Robert V. Jensen and
6 Thomas Evans
7 Assistant Attorneys General
8 Department of Ecology
9 Olympia, Washington 98504

10 Mr. Leonard W. Kruse
11 Attorney at Law
12 P. O. Box 126
13 Port Orchard, Washington 98366

14 Board of Mason County Commissioners
15 Mason County Courthouse
16 4th and Alder
17 Shelton, Washington 98584

18 Mr. Lester E. Krueger
19 St. Rt. 1, Box 499
20 Belfair, Washington 98528

21 the foregoing being the last known post office addresses of the above-
22 named parties. I further certify that proper postage had been affixed
23 to the envelopes deposited in the U.S. mail.
24

25
26 LaRene C. Barlin
27 LARENE C. BARLIN
SHORELINES HEARINGS BOARD

28 FINAL FINDINGS OF FACT,
29 CONCLUSIONS OF LAW
30 AND ORDER

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
MASON COUNTY TO LESTER E. KRUEGER)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
SLADE GORTON, ATTORNEY GENERAL,)
Appellants,)
vs.)
MASON COUNTY and LESTER E. KRUEGER,)
Respondents.)

SHB No. 90

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, a request for review of a substantial development permit issued by Mason County to Lester E. Krueger, came before the Shorelines Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree and Robert F. Hintz) at a hearing in the City Hall, Port Orchard, Washington, at 1:30 p.m., November 2, 1973.

Appellants appeared through Robert V. Jensen and Thomas Evans, Assistant Attorneys General. Respondent Mason County did not appear;

EXHIBIT A

1 respondent Krueger appeared through Leonard W. Kruse. Richard
2 Reinertsen, Olympia court reporter, recorded the proceedings.

3 Witnesses were sworn and testified. Exhibits were admitted.
4 Counsel made closing arguments.

5 From testimony heard, exhibits examined, arguments considered
6 and transcript reviewed, the Shorelines Hearings Board makes these

7 FINDINGS OF FACT

8 I.

9 In 1970, respondent Krueger purchased a parcel of land in Mason
10 County fronting for 180 feet on the south shore of Hood Canal about
11 seven miles west of Belfair. The parcel is bisected by a state highway.
12 The shoreside portion has a depth of about 20 feet between the line
13 of high water and the highway. The upland portion rises in a steep
14 gradient for about 1,000 feet from the highway and is subject to
15 slides. The shoreside portion includes an old wooden bulkhead in
16 poor repair at the line of high water. There are no other facilities
17 on the shoreside portion.

18 II.

19 Mr. Krueger, who resides on bulkheaded waterfront property
20 about one-half mile east of the instant land, desired to develop
21 the shoreside portion of the instant property as a homesite for his
22 children. On March 12, 1973, he applied for a substantial development
23 permit from Mason County for the construction and filling of a
24 bulkheaded area which would project seaward from the existing
25 bulkhead for a distance of 50 feet. On May 14, 1973, Mason County
26 approved the permit. On July 5, 1973, appellants filed a request

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 for review of the issuance of the permit. That request for review
2 is the subject of these proceedings.

3 III.

4 There is no sewage disposal system in the area. Mr. Krueger's
5 proposed residence would employ a septic tank and drainfield.
6 Because it would be difficult if not impossible to develop a sanitary
7 drainfield on the sloping, slide-prone upland portion, Mr. Krueger
8 planned the drainfield for the shoreside portion of the property.

9 IV.

10 A regulation of the Thurston-Mason County Health Department
11 requires that sanitary drainfields be at least 50 feet from salt water.

12 V.

13 Mr. Krueger's chief purpose in constructing the extended
14 bulkheaded and filled area 50 feet seaward of the existing high
15 water line is to comply with the regulation cited in Finding of Fact IV.

16 VI.

17 Mr. Krueger's property could be protected from salt water erosion
18 by the erection of a bulkhead on the existing high water line. The
19 proposed bulkhead and fill is not necessary for the protection of
20 existing facilities.

21 VII.

22 The shores of Hood Canal are of state-wide significance under
23 RCW 90.58 but Mason County, in issuing the permit, made no specific
24 findings as to the paramount interests of the people of the state,
25 to the preservation of the natural character of the shoreline, to
26 long-term over short-term benefits and/or to protection of the

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 resources and ecology of the shoreline.

2 VIII.

3 The intertidal zone fronting the instant property has natural
4 characteristics, is an oyster habitat, and is part of the most
5 intensive spawning area in Puget Sound and its tributaries for surf
6 smelt, an important salmon forage, recreational and commercial fish.
7 Construction of the proposed bulkhead and fill would kill oysters
8 and would destroy a spawning area for 25,000 to 400,000 surf smelt
9 a year. The proposed construction would remove forever 180 feet of
10 the state's intertidal zone resource.

11 From these findings, the Shorelines Hearings Board comes to
12 these

13 CONCLUSIONS OF LAW

14 I.

15 Because Mason County, in granting the instant permit, made
16 no specific findings as to environmental considerations required
17 in RCW 90.58, this Board must adjudicate this request for review
18 from its Findings of Fact as held up to applicable statutes and
19 regulations.

20 Pursuant to RCW 90.58, the State Department of Ecology adopted
21 Final Guidelines (WAC 173-16) on June 20, 1972. A stated purpose of
22 those Guidelines (WAC 173-16-010(1) is to "serve as standards for
23 implementation of the policy of chapter 90.58 RCW for regulations of
24 uses of the shorelines." WAC 173-16, therefore, is the yardstick
25 against which the instant permit must be measured.

26 II.

27 From Finding of Fact VIII, it is seen that the permit does not

1 "preserve the natural character of the shoreline," "result in long-
2 term over short-term benefit" or "protect the resources and ecology of
3 the shorelines" (WAC 173-16-040(5)(b), (c) and (d)).

4 III.

5 From Finding of Fact VIII, it also is seen that the bulkhead
6 and fill do not "minimize damage to fish and shellfish habitats"
7 (WAC 173-16-060(11)(b)).

8 IV.

9 From Finding of Fact V, it is seen that the proposed project is
10 for the purpose of creating land and from Finding of Fact VI that
11 it is not necessary for the protection of existing facilities. Both
12 of these points run afoul of guidelines in WAC 173-16-060(11)(e).

13 V.

14 From Finding of Fact III, it is obvious that respondent Krueger
15 faces a major problem in trying to provide a sanitary drainfield
16 for his projected residence if the permit he holds from Mason County
17 is invalidated by the Board. But if the only solution to that problem
18 is the development of an acceptable sewage disposal system, that is
19 what it must be. The residents and prospective residents of the
20 south shore of Hood Canal, sooner or later, probably must face up
21 to the fact that the Shoreline Management Act of 1971 (RCW 90.58)
22 simply does not permit that shoreline of state-wide significance to
23
24
25
26

1 be used for the disposal of human sewage.

2 Therefore, the Shorelines Hearings Board issues this

3 ORDER

4 The permit issued by Mason County to Lester E. Krueger is
5 overruled and is remanded to Mason County for cancellation.

6 DONE at Lacey, Washington this 23rd day of January, 1974.

7 SHORELINES HEARINGS BOARD

8 Walt Woodward
9 WALT WOODWARD, Chairman

10 W. A. Gissberg
11 W. A. GISSBERG, Member

12 Mary Ellen McCaffree
13 MARY ELLEN McCAFFREE, Member

14 Robert F. Hintz
15 ROBERT F. HINTZ, Member

16 Tracy J. Owen
17 TRACY J. OWEN, Member

18 Ralph A. Beswick
19 RALPH A. BESWICK, Member

20
21
22
23
24
25
26
27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER